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No. 00-203

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

CLEVELAND INDIANS BASEBALL COMPANY,
A LIMITED PARTNERSHIP,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF *AMICUS CURIAE* OF THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE

The Major League Baseball Players Association respectfully submits this brief *amicus curiae* for the purpose of bringing to the Court's attention the implications for employees of the matter before the Court.[1] The written consent of the Respondent and the Petitioner to the filing of this brief has been filed with the Clerk of the Court. This brief supports the position of the Respondent.

The Major League Baseball Players Association (the "MLBPA") is a labor union representing players employed by the Major League Baseball Clubs. The MLBPA is an unincorporated association with its principal offices located in the City of New York. MLBPA members were the recipients of the awards of back wages that are at issue in the matter before the Court.

There are approximately eighteen million American workers represented in their workplaces by organized labor unions. Bureau of Labor Statistics News Release, January 19, 2000. Each of these workers is potentially subject to contractual or statutory labor violations which may result in the worker earning less than he or she should during any given period of time. The usual remedy for a worker whose wages are so reduced is an award of back pay to make the worker financially whole. The interpretation of the Internal Revenue Code proposed by Petitioner can have the effect of reducing the value of a back pay award so that it does not make a worker financially whole. All employees have a substantial interest in combating this potential inequity.

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[1] *Amicus curiae* and counsel for *amicus curiae* authored this brief in its entirety. No person or entity, other than the *amicus curiae* and its counsel, made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The purpose of a back pay award on account of a contractual or statutory labor violation is to make the affected worker financially whole. Under Petitioner's interpretation of the Internal Revenue Code, because of changing employment circumstances of an affected worker and because of changing Federal Insurance Contributions Act tax rates and wage bases, back pay earned in one year but paid in a later year may be subject to greater taxes than would have been imposed had the worker been paid when he or she should have been paid. Therefore, the back pay award does not actually result in the worker being made financially whole. This additional burden is most likely to fall on workers who have lower incomes in the year in which back pay is actually paid than they had in the year the back pay should have been paid. These workers are likely to be workers who are unemployed or underemployed and are least able to bear this additional tax burden. Workers who bear this additional tax burden receive no increased entitlement to Social Security benefits.

ARGUMENT

When union-represented workers lose wages because of a contractual or statutory labor violation by an employer or an industry as a whole, workers typically seek redress either through the National Labor Relations Board (the "NLRB") or through private arbitration.

When the NLRB determines that an unfair labor practice has occurred, its governing statutory authority, the National Labor Relations Act, 29 U.S.C. § 151 *et. seq.* (the "NLRA"), requires that it issue orders that return the affected workers to the same financial status they would have enjoyed but for the violation; no more and no less. 29 U.S.C. § 160(c); *National Labor Relations Board v. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263, 265 (1969); *United Brotherhood of Carpenters and*

Joiners v. National Labor Relations Board, 365 U.S. 651, 657, 658 (1961). When an unfair labor practice results in reduced pay, the NLRB is empowered to order back pay to the worker in order to make the worker financially whole.[2] *National Labor Relations Board v. Gullett Gin Co.*, 340 US 361, 363 (1951).

Similarly, under federal labor policy favoring peaceful resolution to labor management disputes, the parties to a collective bargaining agreement typically empower arbitrators to resolve disputes arising under the agreement. *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). When fashioning remedies for contractual violations, arbitrators routinely award monetary damages to place the aggrieved party in the same position in which he or she would have been absent the violation. F. Elkouri and E. Elkouri, *How Arbitration Works*, 579-581 (5th ed., 1997).

To ensure that a back pay award makes the affected worker whole, an award is made with interest from the date of the violation. *National Labor Relations Board v. International Measurement and Control Co.*, 978 F2d 334, 336 (7th Cir. 1992); *Winn-Dixie Stores v. National Labor Relations Board*, 413 F.2d 1008, 1010 (5th Cir. 1969); Elkouri and Elkouri,

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[2] Back pay may also be awarded by other federal or state agencies or by federal or state courts under common law tort or contract principles or under a number of different statutes, including: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g); Equal Pay Act, 29 U.S.C. § 216(b), (c); Age Discrimination in Employment Act, 29 U.S.C. § 626(c); Americans with Disabilities Act, 42 U.S.C. § 12117(a); Jury Systems Improvement Act of 1978, 28 U.S.C. 1875(b)(1); Uniformed Services Employment and Reemployment Act of 1994, 38 U.S.C. § 4323(c)(a)(A)(ii); analogous state statutes; and state and federal minimum wage acts.

supra at 591, n. 353. To ensure that a back pay award does not put the worker in a better than whole position, each back pay award is reduced by the amount of income that the affected worker was able to generate because of the unfair labor practice (*i.e.*, by finding substitute employment). *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 197-198 (1941).

The Congressional intent to make workers injured by contractual breaches financially whole, would be defeated in many back pay cases by the interpretation of the Internal Revenue Code proposed by Petitioner. Petitioner argues that the taxes collected from workers under Chapter 21 of the Internal Revenue Code, known as the Federal Insurance Contributions Act, 26 U.S.C. § 3101, *et seq.* ("FICA"), must be collected on any award of back pay based on the rules and circumstances that apply to that worker in the year of payment, not the year in which the wages should have been paid. Because FICA tax rates, wage bases and the wage income of any individual worker vary from year to year, the actual FICA taxes paid on a back pay award are likely to be different if FICA taxes are calculated based on the circumstances existing in the year the back pay is paid, rather than in the year it should have been paid.[3]

For example, between 1986, when some of the back pay in the current case should have been paid, and 1994 when it was actually paid, the rate for determining the employee portion of the OASDI component of the FICA tax rose from 5.7% to

[3] FICA tax is collected from both employer and employee and consists of two components: the tax for Old-Age, Survivors and Disability Insurance ("OASDI") and the tax for Hospital Insurance ("HI"). 26 U.S.C. §§ 3101 and 3111. Each component of the FICA tax is charged against no more than a maximum amount of a worker's wages; an amount known as the "contribution and benefits base" which is established each year under the Social Security Act, 42 U.S.C. § 430. 26 U.S.C. § 3121(a). The maximum contribution base is more commonly known as the "wage base."

6.2%. As a result, absent unusual circumstances, any worker who received back pay in 1994, for wages that should have been paid in 1986 would pay an additional 0.5% in FICA taxes under Petitioner's interpretation, and, to that extent, would not be made financially whole by the back pay award. In addition, the wage base for the HI component of the FICA tax rose from $42,000 in 1986 to an uncapped amount in 1994, with the result that back pay amounts in excess of $42,000 would be subject to an additional 1.45% in FICA taxes on such amounts in 1994, further widening the gap between the award and the goal of making the worker financially whole.

The situation would be particularly harsh for a worker who had actually been paid wages in 1986 at or above the maximum wage base subject to FICA taxes and who then received back pay in a later year when the worker's income was otherwise under the maximum wage base. For example, if a worker was actually paid $45,000 in 1986, when the wage base was $42,000, he or she paid the maximum amount of FICA taxes of $3,003. If he or she had received an additional $2,000 of wages in 1986, there would have been no additional FICA taxes. However, if in 1994 the worker received $2,000 of back pay with respect to 1986, and the worker's other wages in 1994 were $58,000 or less, the entire amount of the back pay award would be subject to FICA taxes under Petitioner's interpretation, because the wage base in 1994 was $60,600. In that situation the worker would pay additional FICA taxes of $153 with the result that the worker would actually receive only 92% of the amount that would have made the worker financially whole.

Applying the Petitioner's interpretation to the Major League Baseball players who actually received the back pay awards in the matter before the Court, will not make the players financially whole. The players who received a back pay award for 1986 were playing for a Major League

Baseball club in 1986 and, therefore, received wages in excess of the 1986 wage base. J.A. 9 (DCt Docket No. 27, Sum. J. Appendix, Exh. 10 (January 30, 1998)). As a result, the 1994 back pay award for wages that should have been paid in 1986 would, if actually paid in 1986, have been subject to no FICA taxes. However, treated as wages paid in 1994, as required by Petitioner's interpretation, the award would be subject to at least an additional 1.45% of FICA taxes (the 1.45% of uncapped HI) for any portion of the award over the player's wage base for 1994 and up to an additional 7.65% of FICA taxes (the full FICA tax rate in 1994) for any portion of the award under the player's wage base for 1994. As a result, it is clear that the back pay awards will not make the players financially whole.

FICA tax rates have tended to increase over time and the wage base subject to taxation changes every year because it is adjusted for average wage inflation.[4] If Petitioner's

[4] *Fifteen Years of Changes to FICA Tax Rates and Wage Bases*

Source: Social Security Administration, *Tax Rate Table and Maximum Taxable Earnings* (last modified Oct. 18, 2000), <http://www.ssa.gov/OACT/COLA/taxRates.html>.

Year	OASDI Wage Base	OASDI Tax Rate	HI Wage Base	HI Tax Rate
1986	$42,000	5.70%	$42,000	1.45%
1987	$43,800	5.70%	$43,800	1.45%
1988	$45,000	6.06%	$45,000	1.45%
1989	$48,000	6.06%	$48,000	1.45%
1990	$51,300	6.20%	$50,400	1.45%
1991	$53,400	6.20%	$125,000	1.45%
1992	$55,500	6.20%	$130,200	1.45%
1993	$57,600	6.20%	$135,000	1.45%
1994	$60,600	6.20%	No Limit	1.45%
1995	$61,200	6.20%	No Limit	1.45%
1996	$62,700	6.20%	No Limit	1.45%
1997	$65,400	6.20%	No Limit	1.45%
1998	$68,400	6.20%	No Limit	1.45%
1999	$72,600	6.20%	No Limit	1.45%
2000	$76,200	6.20%	No Limit	1.45%

interpretation of the Internal Revenue Code is followed, many back pay payments will be subject either to higher FICA tax rates or will be subject to FICA taxes that would not otherwise have been owed because the wage base in the year the back pay was earned had already been exceeded.[5] The workers most likely to be affected by this extra taxation are those workers who by the time of the back pay award are unemployed or underemployed and, therefore, earning less than the wage base amount, although they were making that amount in the year the back pay should have been paid. Workers affected will be the unemployed, the disabled and the retired. Not only does Petitioner's interpretation tend to defeat the purpose of back pay, which is to make the worker financially whole, but it tends to impose an extra burden on those workers who can least afford it.

The worker who bears the burden of extra taxation that could be imposed by Petitioner's interpretation of the Internal Revenue Code with respect to awards of back pay receives no compensating benefit in the form of greater entitlement to Social Security benefits. Unlike actual wages paid in a given year, back pay awards pursuant to a statute, such as awards by the NLRB under authority of the NLRA, are credited by the Social Security Administration to the year in which those wages should have been paid, not the year in which actually

[5] In the unlikely event that there was average wage deflation, resulting in a decrease of the FICA wage base, or there was legislation decreasing the FICA tax rate, between the time back pay wages were earned and the time they were paid, or if the worker had other wages in excess of the tax base in the year of the back pay award but not when the award should have been paid, under Petitioner's interpretation, the worker could receive a windfall. He or she could be paid an amount that would have been subject to FICA taxes had it properly been paid, but that would be subject to reduced or no FICA taxes when actually paid. The result would be to make the worker more than financially whole. Although clearly a benefit to workers, this result would also defeat the purpose of back pay awards, which is to compensate rather than reward, and would be equally wrong.

paid. Social Security Administration Program Policy Statement, SSR 83-7 (1983), relying on *Social Security Board v. Nierotko*, 327 U.S. 358 (1946).

CONCLUSION

Imposing FICA taxes on awards of back pay in the manner proposed by Petitioner defeats the purpose of back pay awards which is to make workers affected by unfair labor practices financially whole. In many circumstances, Petitioner's interpretation would result in workers paying additional FICA taxes without any increased entitlement to Social Security benefits. To the extent that additional FICA taxes are paid, workers are not made financially whole.

Respectfully Submitted

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